

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Teufel	Team: Team # 6	CCRB Case #: 200703414	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/11/2007 1:25 AM	Location of Incident: In front of 45 West 21st Street	Precinct: 13	18 Mo. SOL 9/11/2008	EO SOL 9/11/2008	
Date/Time CV Reported Sun, 03/11/2007 7:33 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 03/11/2007 7:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Romance	08574	931085	013 PCT
2. POM John Sylvestre	11909	931290	013 PCT
3. POM Jason Katigbak	23920	928575	013 PCT
4. POM Patrick Donnelly	22898	933753	013 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Romance	Abuse: PO Richard Romance stopped § 87(2)(b)	
B.POM Richard Romance	Discourtesy: PO Richard Romance spoke obscenely to § 87(2)(b)	
C.POM Richard Romance	Force: PO Richard Romance used physical force against § 87(2)(b)	
D.POM John Sylvestre	Force: PO John Sylvestre used physical force against § 87(2)(b)	
E.POM Jason Katigbak	Force: PO Jason Katigbak used physical force against § 87(2)(b)	
F.POM Patrick Donnelly	Force: PO Patrick Donnelly used physical force against § 87(2)(b)	

Synopsis

§ 87(2)(b) left this complaint on the CCRB's website on March 11, 2007. § 87(2)(b) alleged that at 1:25 AM on that date, he exited the bar "Porky's" on 45 West 21st Street in Manhattan. A fight had broken out inside, necessitating the exit of § 87(2)(b) and several of his friends. After exiting, a police officer, later identified by the CCRB as PO Richard Romance, approached § 87(2)(b) and immediately told him to "shut the fuck up," (Allegations A and B). PO Romance proceeded to handcuff § 87(2)(b) place him against a vehicle, and raise his arms behind his back until he felt pain (Allegation C). PO Romance then placed § 87(2)(b) on the ground. Three more officers, later identified by the CCRB as PO John Sylvestre, PO Jason Katigbak, and PO Patrick Donnelly, then approached and allegedly began kicking and punching § 87(2)(b) (within Allegation C, and Allegations D, E, and F). § 87(2)(b) was then lifted from the ground. A few moments later, he was given a criminal summons for disorderly conduct by PO Romance.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b) initially left this complaint on the CCRB's website, providing a brief narrative in the process (Encl. 7A-E). § 87(2)(b) provided an official statement at the CCRB on March 22, 2007 (Encl. 9A-D). These statements are mostly consistent, and any inconsistencies are noted below.

On March 11, 2007, at approximately 1:25 AM, § 87(2)(b) was inside "Porky's," a bar on West 21st Street in Manhattan. He had been there with friends since approximately 11:00 PM, and over the course of the evening had consumed two or three drinks. A fight broke out between two females, one of whom, § 87(2)(b) was at the bar with § 87(2)(b). Also at the bar with § 87(2)(b) were § 87(2)(b) and several of § 87(2)(b)'s friends from North Carolina. After the fight broke out, § 87(2)(b) decided that he wanted to leave the bar. A bouncer approached § 87(2)(b) and began to escort her toward the front of the bar. § 87(2)(b) and § 87(2)(b) followed. As they walked, § 87(2)(b) argued with the bouncer about what had occurred. § 87(2)(b) interrupted this by telling § 87(2)(b) not to belabor the point, then telling the bouncer they would get their jackets and leave. The bouncer agreed. § 87(2)(b) told § 87(2)(b) to grab the jackets and meet him outside. While walking with the bouncer, § 87(2)(b) exited through the front door of the bar, along with § 87(2)(b) and § 87(2)(b). He stood next to the bouncer as he did this, and the two men spoke loudly to each other as § 87(2)(b) attempted to explain what had happened inside. § 87(2)(b) took about five steps outside of the bar with the bouncer before an officer, later identified by the CCRB as PO Romance, approached him, standing in between § 87(2)(b) and the bouncer. § 87(2)(b) described PO Romance as being a white male with a medium build, standing about 5'10". § 87(2)(b) noticed about two or three officers directly to his right, and additional officers mulling about the pavement. The streets were busy with pedestrian traffic at this time, owing to a glut of alcohol purveying establishments situated next to one another.

PO Romance immediately told § 87(2)(b) who was in the midst of speaking with the bouncer, to "shut the fuck up." § 87(2)(b) raised his hands, palms forward, and told the police officer that he was not trying to cause a problem, a point with which the bouncer vocally agreed. (During his initial CCRB complaint, § 87(2)(b) alleged here that he was pushed into a parked car, an allegation he did not make during his official statement.) § 87(2)(b) also said, "Negative." PO Romance responded by saying, "Negative?" He then told § 87(2)(b) he was going to "get cuffed," then grabbed § 87(2)(b)'s left hand and turned him around to face a car parked on the street in front of the bar. PO Romance then pushed § 87(2)(b) against the passenger side window of the car. In the background, § 87(2)(b) yelled that § 87(2)(b) had not done anything. PO Romance grabbed § 87(2)(b)'s arm as he was up against the car and proceeded to lift it up. PO Romance lifted § 87(2)(b)'s arm until it was past the middle of his back, at which point § 87(2)(b) began to feel pain. With his other hand, PO Romance was holding onto § 87(2)(b)'s hand, which remained at the bottom of his back. § 87(2)(b) told PO Romance that this action hurt, then attempted to pull his arm down again. During his interview with the CCRB, § 87(2)(b) freely referred to this action as "resisting." PO Romance reacted to this by pushing § 87(2)(b) toward the ground by his arm, to which PO Romance was now applying weight. § 87(2)(b) began to fall toward the ground, though he struggled to

stand up and resist the pressure. § 87(2)(b) could hear § 87(2)(b) telling him not to resist. § 87(2)(b) first went down to his knees, at which point he saw the legs and feet of other officers approaching. He then felt a knee hit his back. § 87(2)(b) then fell all the way to the ground, facedown, with his body being perpendicular to the parked car. § 87(2)(b)'s head and part of his chest hung over the side of the curb. Beneath his head was a puddle. During the previous struggle, § 87(2)(b) and the officer had moved a few feet to the left, which was how he was able to be partially off the sidewalk. As he lay on the ground, § 87(2)(b) felt several punches and kicks to his back, head, and the side of his face. § 87(2)(b) said he could not breathe, because his face was partially in a puddle. (During his initial complaint to the CCRB, § 87(2)(b) alleged that the officers pushed his face into the puddle. The investigator clarified that this was not true during § 87(2)(b)'s official statement.) At around this point, while he was fully on the ground, an officer handcuffed § 87(2)(b) yelled that he had not done anything, and asked the officers "what the fuck" they were doing. Two officers then grabbed § 87(2)(b) and lifted him to his feet. § 87(2)(b) could not see who these officers were.

§ 87(2)(b) was led next to a yellow taxi that he believed belonged to an undercover police officer, as he saw an officer in uniform exit the vehicle. The taxi was about two car lengths away from the original vehicle § 87(2)(b) had been pushed against. The officers who led § 87(2)(b) to the taxi told him not to move. They then walked away, as another officer, later identified by the CCRB as PO Sylvestre, stood next to § 87(2)(b). § 87(2)(b) described this officer as a white male with a medium build, standing approximately 6'0". PO Sylvestre told § 87(2)(b) to calm down, and told him that he had been making a scene and talking back to officers. § 87(2)(b) responded that he had not done anything. PO Sylvestre then wrote § 87(2)(b) a summons. § 87(2)(b) was held next to the taxi for approximately fifteen minutes, as he spoke with § 87(2)(b) and PO Sylvestre. Eventually PO Sylvestre removed § 87(2)(b)'s handcuffs, at which point § 87(2)(b) left the scene with his friends.

§ 87(2)(b) received a few cuts and bruises from this incident. Specifically he had a few cuts on his face, and some bruising on his shoulders and chest. He did not seek medical treatment, and did not have any marks at the time of this interview. § 87(2)(b) said his friends had been drinking, but said none appeared obviously intoxicated.

Injuries

§ 87(2)(b) stated that after this altercation, he suffered from scrapes and bruises to his face, shoulders, and chest. § 87(2)(b) provided the investigator with photos of these injuries (Encl. 10A-G). In the photos, red marks can be seen in close-up on the following places: § 87(2)(b)'s hand, arm, back, face, and chest. The marks are very small, and in appearance are similar to a rash.

Results of Investigation

Civilian Statements

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b), provided an official statement at the CCRB on April 10, 2007 (Encl. 11A-C).

On March 11, 2007, at approximately 1:25 AM, § 87(2)(b) was inside "Porky's" at 45 West 21st Street in Manhattan. A fight had broken out inside the club involving § 87(2)(b) and § 87(2)(b). § 87(2)(b) desired to leave as quickly as possible. She began waiting on the coat check line to receive her jacket, as § 87(2)(b) her boyfriend, informed her that he would wait outside. At this point, two bouncers escorted § 87(2)(b) out, with § 87(2)(b) and § 87(2)(b) following close behind. After § 87(2)(b) finished getting the coats of her and her friends, she turned around and looked outside. Through the bar's front door, she saw a man lying on the ground outside surrounded by several police officers, including PO1 and PO2. The police officers appeared to be swinging their fists, though § 87(2)(b) could not confirm whether they were making contact with the man. § 87(2)(b) asked the bouncers by the door what color shirt the man was wearing, as she could not see, and the bouncers replied that he was wearing a white shirt. § 87(2)(b) told the bouncers that this was her boyfriend, and she needed to be allowed outside. For about two or three minutes, the bouncers would not allow § 87(2)(b).

§ 87(2)(b) to exit, as she was crying and appeared very emotional. The bouncers then relented, and allowed her to leave.

When § 87(2)(b) went outside, she saw § 87(2)(b) lying facedown on the cement outside of the bar. Several officers were talking to § 87(2)(b) who appeared upset. The top part of his body was hanging off of the curb. Approximately five officers were attempting to pick him up. When asked whether § 87(2)(b) was trying to defend himself, § 87(2)(b) explained that she could not see, but that § 87(2)(b) told her later that he was “pulling his arms back,” and telling the officers to take his identification. When two officers, later identified by the CCRB as PO Sylvestre and PO Donnelly, managed to do so, they brought him to a nearby car and placed him against the vehicle’s side so that his face was against the car. § 87(2)(b) described PO Sylvestre as being a white male standing 6’0”, who was “not very built.” She described PO Donnelly as being a “fat” white male standing 6’0”). This vehicle was about one storefront over from “Porky’s.”

§ 87(2)(b) was already handcuffed by this time, and likely had been when he was lying on the ground. § 87(2)(b) approached the officer, and saw one of the bouncers from “Porky’s” explaining to the officers that he had not been one of the disorderly people inside the club. § 87(2)(b) also began defending § 87(2)(b) to the officers, saying that he had not been fighting, and that he was an ex-marine. PO Sylvestre would not listen to § 87(2)(b) so she began speaking with a third officer, later identified as PO Romance. He told her, “You’re boyfriend is beating up the cops inside the club. We had to take him out.” As this occurred, § 87(2)(b)’s other friends were yelling, “Let him go!” At this point, § 87(2)(b) was handcuffed, standing next to the unmarked police vehicle, a few feet from § 87(2)(b). After a few minutes, PO Sylvestre finished writing § 87(2)(b) a summons, and then removed his handcuffs. He then handed the summons to § 87(2)(b) with an abrupt, “Get out of here.” § 87(2)(b) and § 87(2)(b) then walked away quickly.

During this interview, § 87(2)(b) stated that she “didn’t know what happened out there,” alluding to the initial scuffle outside the bar, but that § 87(2)(b) as an ex-marine, is “trained to react,” and that if someone attacked him, his natural reaction would be to “fight back.”

§ 87(2)(b) also stated that whenever any individuals approached § 87(2)(b) as the officers were arresting him, PO Romance and PO Donnelly would tell them to stay back or they would be arrested. After this incident, § 87(2)(b) had scrapes and bruises on his chin, arms, and back. § 87(2)(b) had not had any drinks that night, and she estimated that § 87(2)(b) had imbibed two drinks.

Attempts to Interview Additional Witnesses

The investigator spoke with § 87(2)(b) who shares a residence and cell phone with § 87(2)(b) twice between April 2, 2007, and April 13, 2007. Both times § 87(2)(b) stated that he wished to provide a statement, but would have to check his work availability and call back. On April 18, 2007, the investigator left a voicemail for § 87(2)(b) and § 87(2)(b) requesting a call back. Finally, on June 22, 2007, the investigator called and spoke with § 87(2)(b) who stated that because § 87(2)(b) had already taken care of his summons, he was no longer interested in pursuing this investigation. The investigator requested that § 87(2)(b) confirm this with § 87(2)(b) and then contact the CCRB. § 87(2)(b) agreed. However, as of June 25, 2007, § 87(2)(b) has not contacted the CCRB.

On March 22, 2007, the investigator spoke with “§ 87(2)(b)” the § 87(2)(b) of “Porky’s” bar, and asked whether the establishment has video cameras facing the sidewalk. Rob agreed to view the video footage from March 11, 2007, at 1:30 AM. After doing so, he stated that the cameras at “Porky’s” face inside the bar, and did not capture any of this incident.

Officer Statements

PO Richard Romance

Memo Book

PO Romance’s memo book notes that at 1:10 AM, he stopped one male regarding a “dispute” in front of 45 West 21st Street. At 1:27 AM, PO Romance notes that he issued a summons for disorderly conduct (Encl. 12A-C).

Summons

The summons prepared by PO Romance and given to § 87(2)(b) notes that § 87(2)(b) was charged with subsection one of disorderly conduct, engaging in “fighting or in violent, tumultuous or threatening behavior,” (Encl. 13A).

Official Statement

PO Richard Romance, a § 87(2)(b), provided an official statement at the CCRB on May 3, 2007 (Encl. 14A-C).

On March 11, 2007, PO Romance worked a tour of 8:00 PM to 4:35 AM. He was assigned to anti-crime duty, and was partnered with PO Sylvestre. He was in uniform, and assigned to an unmarked vehicle.

PO Romance’s account is consistent with that provided by PO Sylvestre up until the point where the officers together approached the apparent altercation. PO Romance exited his vehicle and spoke with several people present, who confirmed that a fight had indeed occurred. PO Sylvestre also approached and began speaking with people, and two other officers who were in the area also began investigating. These officers were PO Connelly and PO Katigbak. § 87(2)(b) approached PO Romance and asked what was going on with “his friend,” who had apparently been involved in the altercation. PO Romance told § 87(2)(b) to walk around the block and then come back, and then turned around. § 87(2)(b) said “Negative,” then again approached PO Romance by walking toward him. PO Romance turned around, placed his hand on § 87(2)(b)’s shoulder to stop him from getting too close, and told § 87(2)(b) that this had nothing to do with him, and that he should turn around and take a walk. § 87(2)(b) began pushing into PO Romance’s hand, and the officer responded to this by telling § 87(2)(b) to turn around, as he would be placed in handcuffs.

§ 87(2)(b) did not respond. PO Romance then grabbed § 87(2)(b) and pushed him backwards slightly, so that he would be placed against a vehicle parked on the street. PO Romance could not recall what part of § 87(2)(b)’s body he grabbed. § 87(2)(b) responded to this by pushing back towards PO Romance, and also by trying to swat the officers’ arms away from him. PO Romance managed to get § 87(2)(b) against the vehicle, at which point the officer instructed him to turn around and face the vehicle, as he would be handcuffed. § 87(2)(b) did not respond verbally, but continued struggling by pushing against the officer and swatting at PO Romance’s arms. PO Sylvestre appeared to notice this, and walked towards the two. PO Sylvestre told § 87(2)(b) to relax, but § 87(2)(b) would not, and also began yelling things at the officers, though PO Romance could not recall what he yelled. PO Romance then turned around and noticed the large crowd behind him. PO Sylvestre and § 87(2)(b) were at this point struggling, with PO Sylvestre attempting to bring § 87(2)(b) to the ground by tripping him with his leg. PO Sylvestre briefly placed § 87(2)(b) face-first against the vehicle before § 87(2)(b) forced himself to turn around, and continued pushing against the officer. After a few moments of struggle, PO Sylvestre managed to place § 87(2)(b) facedown on the ground. PO Romance was not sure exactly how this was accomplished, as at this point he was also worried about the large crowd behind him. Several of § 87(2)(b)’s friends had approached and were inquiring as to what was going on, and PO Romance was busy telling them to keep back.

§ 87(2)(b) was now lying on the ground in front of the vehicle PO Romance had placed him against. PO Sylvestre was on the ground on top of § 87(2)(b) as the struggle had apparently caused the officer to fall as well. § 87(2)(b) continued resisting by kicking his feet and swinging his arms, and trying to stop the officers from handcuffing him. PO Kaitgbak and PO Connelly assisted in trying to subdue § 87(2)(b) by grabbing his legs and trying to generally hold him down. Eventually PO Sylvestre was able to handcuff him. PO Sylvestre and PO Romance then lifted § 87(2)(b) from the ground. PO Romance did not believe that § 87(2)(b)’s face was ever in a puddle on the ground, but stated that there may have been a puddle around. PO Sylvestre told him to calm down, and § 87(2)(b) appeared to do just that, as he did not resist the officers walking him toward their own unmarked vehicle a car or two down. Once at the vehicle, PO Romance went into § 87(2)(b)’s pocket to retrieve his identification. At that point § 87(2)(b) told the officers that he was an ex-marine and was going back to active duty shortly. PO Romance entered the vehicle and began writing a summons while PO Sylvestre and § 87(2)(b) spoke outside. PO Sylvestre also may have spoken with several of § 87(2)(b)’s friends. PO Romance spent five to ten minutes writing the summons. He then exited the vehicle, handed the summons to § 87(2)(b) and told him to leave the area. PO Romance never spoke with any of § 87(2)(b)’s friends. § 87(2)(b) did not appear injured, and did not complain of any injuries to PO Romance. PO Romance did not believe § 87(2)(b) was “totally intoxicated,” but stated that “you could tell he had a couple.”

During this interview PO Romance explained that because of § 87(2)(b)'s status as a marine, he decided to give § 87(2)(b) a summons, rather than put him through the system. PO Romance did not use any profanity during this encounter, and did not hear PO Sylvestre use any. PO Romance could not recall whether officers used any punches or kicks on § 87(2)(b). PO Romance also stated that § 87(2)(b) was disorderly due to his "violent behavior" in front of a large crowd of people, as the sidewalk was packed with people.

PO John Sylvestre

Memo Book

PO Sylvestre's memo book contains no entries regarding this incident (Encl. 15A-B).

Official Statement

PO John Sylvestre, a § 87(2)(b), provided an official statement at the CCRB on May 30, 2007 (Encl. 16A-B).

On March 11, 2007, PO Sylvestre worked a tour of 8:00 PM to 4:35 AM. He was partnered with PO Romance, and assigned to anti-crime duty, on a club detail. He was in uniform and believed that he was assigned to a marked van.

On March 11, 2007, at approximately 1:25 AM, PO Sylvestre was with his partner, PO Romance, on West 21st Street in Manhattan, conducting a general club detail. The two were standing on the sidewalk near "Porky's" when PO Sylvestre noticed two bouncers from this establishment escorting two males outside, about twenty feet away from where the officers were standing. It appeared as though the males had been fighting. PO Romance then approached the bouncers as a crowd formed to see what had occurred. PO Sylvestre followed. Once they approached "Porky's," the officers saw that the males appeared to be arguing. At this point § 87(2)(b) approached PO Romance. PO Sylvestre, who was standing next to PO Romance, saw § 87(2)(b) yell the word "negative" several times in succession to PO Romance, who responded by saying that the two were not dealing with § 87(2)(b) at the time. PO Sylvestre could immediately tell that § 87(2)(b) was intoxicated, due to his smell, his red eyes, and the lumbering, uncertain stagger of his walk. PO Romance then turned around and went back to dealing with the crowd. Again, § 87(2)(b) yelled the word "negative" at PO Romance, while standing directly behind him. PO Romance again turned around and said something to the effect of, "I'll tell you one more time, we're not dealing with you right now." § 87(2)(b) responded by saying, "Negative. Negative. Negative." § 87(2)(b) said additional things beyond "negative," but PO Sylvestre could not recall what these things were. PO Romance then grabbed § 87(2)(b) by the arm and led him away from the crowd, toward the nearby police vehicle. As he did this, § 87(2)(b) yanked his arm away and spun around to face PO Romance, saying, "Negative! I'm here to help the situation!" PO Sylvestre then walked towards § 87(2)(b) and grabbed his other arm, again attempting to lead him toward the vehicle. § 87(2)(b) "rolled" on PO Sylvestre to attempt to dislodge his arm, all the while yelling, "Negative! I'm a marine!" PO Sylvestre defined "rolling" as a general tensing up of the body followed by a bodily movement intended to dislodge the arm from a grip.

PO Sylvestre told § 87(2)(b) to stop resisting and turn around. As § 87(2)(b) flailed his arms and continued trying to break away from the officer, PO Sylvestre used a leg sweep combined with his own body weight to take § 87(2)(b) down to the ground so that he could be handcuffed. When he did this, the struggle caused PO Sylvestre to fall with § 87(2)(b) lay halfway off the curb. While this was occurring, § 87(2)(b)'s friends were observing and yelling that § 87(2)(b) had not done anything. On the ground, PO Sylvestre struggled with § 87(2)(b) attempting to pull his hands behind his back. Other officers may have helped with this, but PO Sylvestre was not certain what these officers did, or who they were. They likely helped by grabbing § 87(2)(b)'s hands. After PO Sylvestre was able to handcuff § 87(2)(b) he lifted him from the ground with the help of PO Romance, and the two walked § 87(2)(b) to their vehicle. As soon as he was stood up, § 87(2)(b) began to apologize, saying that he was a marine on active duty and would be shipped off soon to Iraq. This touched PO Sylvestre, as he himself was in Iraq. PO Sylvestre stated that § 87(2)(b) appeared extremely intoxicated, and actually stated himself that he was drunk. § 87(2)(b) also told PO Sylvestre that he was not involved with the original fight in the club, but was only trying to help out his friends. At around this time PO Sylvestre spoke with a female who

identified herself as § 87(2)(b)'s girlfriend. He could not remember the substance of this conversation. § 87(2)(b)'s friends, who were also marines, approached, and PO Sylvestre told them that everything would be fine, and that they should just keep walking. One of these marines identified himself as § 87(2)(b)'s sergeant. The sergeant also told PO Sylvestre that § 87(2)(b) would be leaving for Iraq shortly. PO Sylvestre discussed this briefly with PO Romance, and the two decided to give § 87(2)(b) a criminal summons, rather than put him through the system. PO Romance then handed § 87(2)(b) the summons he had written in the police vehicle, which § 87(2)(b) accepted. § 87(2)(b)'s friends then walked him to a cab, and § 87(2)(b) left the scene.

PO Sylvestre did not use any profanity during this incident. He did overhear some profanity being used, but did not know whether it came from fellow officers or individuals on the street. § 87(2)(b) did not appear injured.

PO Patrick Donnelly

Memo Book

PO Donnelly's memo book notes that at 1:10 AM, he responded to a dispute in front of 45 West 21st Street. At 1:27 AM, he noted that a summons was issued (Encl. 17A-b).

Official Statement

PO Patrick Donnelly, a white male, 5'11", 230 lbs., provided an official statement at the CCRB on June 21, 2007 (Encl. 18A-B).

On March 11, 2007, PO Donnelly worked a tour of 9:45 PM to 6:20 AM. He was assigned to a club and nightlife detail, and was partnered with PO Katigbak. He was in uniform, and assigned to a marked police vehicle.

On March 11, 2007, at approximately 1:10 AM, PO Donnelly was with his partner, PO Katigbak, in front of the club Duvet, which is next door to "Porky's" at 45 West 21st Street in Manhattan. The officers were performing a general club detail and patrolling the area. PO Katigbak noticed PO Romance and PO Sylvestre about fifty feet away attempting to arrest an individual in front of "Porky's." The officers appeared to be struggling, and there was a large crowd in front of "Porky's." PO Katigbak alerted PO Donnelly to this, then ran toward the officers, with PO Donnelly following closely behind. At that point, § 87(2)(b) was standing up, and the officers appeared to be attempting to handcuff § 87(2)(b) by restraining his arms. One of the officers was in front of § 87(2)(b) and the other was behind him. PO Donnelly could not recall which officers were in these positions. § 87(2)(b) was flailing his arms and pushing the officers back, and the officers were telling him to "stop resisting."

When PO Donnelly approached the altercation, he noticed that the crowd was gathering around to watch the arrest taking place. These appeared to be friends of § 87(2)(b)'s. PO Donnelly immediately began performing crowd control, telling all of the assembled individuals to move back. Throughout this incident, PO Donnelly remained focused on keeping the crowd at a safe remove from the altercation. He did not participate in the actual arrest of § 87(2)(b). PO Donnelly did not tell any members of the crowd that they could be arrested for interfering.

When PO Donnelly next turned around, as the arrest was taking place behind him, he saw that § 87(2)(b) was on the ground, as were all three officers. PO Donnelly could not recall whether § 87(2)(b) was face-up or face-down, and was not able to see whether § 87(2)(b) continued his resistance. The officers were on their knees next to § 87(2)(b). PO Donnelly then saw the officers lift § 87(2)(b) from the ground. At this point he was handcuffed, and did not appear to be resisting. § 87(2)(b) then said that he was a marine. PO Romance and PO Sylvestre walked § 87(2)(b) to their nearby unmarked vehicle. PO Donnelly approached PO Romance and PO Sylvestre, and inquired as to the genesis of the altercation. The officers told PO Donnelly that § 87(2)(b) had been kicked out of "Porky's" for fighting. Because § 87(2)(b) now appeared calm, PO Katigbak and PO Donnelly walked back to Duvet and resumed their patrol. § 87(2)(b) did not appear injured, and did not complain of any injuries. PO Donnelly did not use any profanity during this encounter, and did not hear any other officers use profanity.

Officers Not Interviewed

PO Katigbak was not interviewed over the course of this investigation because his testimony would not alter the disposition of any allegations. Also, PO Katigbak is Asian, and as both § 87(2)(b) and § 87(2)(b) specified only white males as allegedly committing misconduct, PO Katigbak is not a

possible subject for any further allegations, beyond the general force being charged against all officers present.

Communication Records

A brief SPRINT report with location listed as 55 West 21st Street shows that an officer from unit 13SP8 noted an arrival on scene at 1:17 AM. At 1:27 AM, this same officer noted a summons served (Encl. 18A).

NYPD Documents

A copy of the roll call from March 11, 2007, for the 13th Precinct notes that PO Sylvestre was partnered with PO Romance and assigned to "Team 2." The roll call also notes the partnership of PO Katigbak and PO Donnelly, both assigned to a post on West 27th Street and 10th Avenue (Encl. 19A-B).

§ 87(2)(b)

§ 87(2)(b)

Civilian CCRB History

This is § 87(2)(b)'s first CCRB complaint (Encl. 6A).

Officer CCRB History

In his four years with the NYPD, PO Romance has had no substantiated CCRB complaints resulting in disciplinary action (Encl. 2A). PO Sylvestre, who also has four years with the NYPD, has also had no substantiated CCRB complaints resulting in disciplinary action (Encl. 3A). PO Katigbak, who has been with the NYPD for 5 years, also has not had any substantiated CCRB complaints resulting in disciplinary action (Encl. 4A). Finally, PO Donnelly, who has been with the NYPD for three years, has not had any substantiated CCRB complaints resulting in disciplinary action (Encl. 5A).

Conclusions and Recommendations

Officer Identification

PO Romance was initially identified by § 87(2)(b) who was able to provide his name during his official statement at the CCRB. During his interview, PO Romance specified that his partner at the time of the incident was PO Sylvestre. During his own interview, PO Sylvestre provided the identities of the officers who assisted in subduing § 87(2)(b) PO Katigbak and PO Donnelly.

§ 87(2)(b)'s description of the officer who initially approached him, and used profanity with him, fits a description of PO Romance, who, as § 87(2)(b) stated, is shorter than PO Sylvestre. Further, PO Romance admitted to being the officer who initially interacted with § 87(2)(b). As such, an allegation of a stop and an allegation of discourtesy are being pleaded against PO Romance.

Because § 87(2)(b) and § 87(2)(b) alleged that all of the officers present used force in punching and kicking § 87(2)(b) while he lay on the sidewalk, an allegation of force is being pleaded separately against each officer. An allegation of force is also being pleaded against PO Katigbak, despite § 87(2)(b) and § 87(2)(b) not noting any Asian officers on the scene, because § 87(2)(b) did not in fact see all the officers who struggled with him, and it is reasonable to believe that PO Katigbak did assist his fellow officers in handcuffing § 87(2)(b).

Allegations Not Pleaded

§ 87(2)(b) claimed that while attempting to handcuff § 87(2)(b) PO Romance and PO Donnelly told all individuals who approached that they should step back or they would be arrested. As there is no dispute that the officers were then involved in a volatile arrest on a crowded sidewalk, and as

such would be entirely justified in arresting individuals who interfered in that arrest, an allegation of threat of arrest is not being pleaded.

Disputed and Undisputed Facts

§ 87(2)(b), § 87(2)(g)

It is undisputed that an altercation occurred between § 87(2)(b) and several police officers, and that § 87(2)(b) resisted to a certain extent. Also, the facts concerning what occurred after § 87(2)(b) was handcuffed, when he was placed next to an unmarked police vehicle, are for the most part undisputed. PO Romance also does not deny turning § 87(2)(b) around and placing him against a vehicle, although the officer did not state that he intentionally injured § 87(2)(b) by pulling his arms up his back.

§ 87(2)(b), § 87(2)(g)

Allegation A: PO Richard Romance stopped § 87(2)(b)

Allegation B: PO Richard Romance spoke obscenely to § 87(2)(b)

§ 87(2)(b) alleged that PO Romance approached him as he conversed with a bouncer, immediately told him to “shut the fuck up,” then immediately grabbed § 87(2)(b)’s left hand and forced him against a parked vehicle in the street. PO Romance denied using this profanity, and stated that § 87(2)(b) in fact approached him first, inquiring as to what happened to “his friend.”

§ 87(2)(g)

§ 87(2)(b). By all accounts, there was a certain amount of chaos on the street at this time, with large amounts of intoxicated individuals present, and a confusing series of events culminating in the ejection of § 87(2)(b) and his friends from “Porky’s.” § 87(2)(b), § 87(2)(g)

§ 87(2)(g) .
Further, § 87(2)(b) admits to resisting the officers' attempt to arrest him by refusing to get on the ground, and attempting to hold his hands down while the officers tried to lift them. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation C: PO Richard Romance used physical force against § 87(2)(b)
Allegation D: PO John Sylvestre used physical force against § 87(2)(b)
Allegation E: PO Jason Katigbak used physical force against § 87(2)(b)
Allegation F: PO Patrick Donnelly used physical force against § 87(2)(b)

§ 87(2)(b) alleged that over the course of trying to handcuff him, PO Romance pulled his arms significantly up § 87(2)(b)'s back, so much so that it caused him pain. After § 87(2)(b) was placed on the ground, several officers allegedly punched and kicked his back, head, and the side of his face. PO Romance and PO Sylvestre denied punching or kicking § 87(2)(b) stating that they only attempted to grab his hands as they tussled on the ground. PO Romance also denied that § 87(2)(b) was against a vehicle for any significant amount of time, and stated that the officers were unable to grab his hands until he was on the ground. PO Donnelly claimed to not have collaborated in this arrest, and instead performed general crowd control.

As stated above, § 87(2)(b)'s injuries were extremely minor. In the pictures provided by § 87(2)(b) they appear as small red marks and bumps, consistent with scrapes, and not with punches and kicks, as § 87(2)(b) alleged. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: